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Claims for Relief

First Claim for Relief

(Declaration of Unenforceability for Copyright Misuse (EULA))

67. PSYSTAR hereby incorporates by reference all of the allegations of paragraphs 1-66 of this First Amended Counterclaim as if fully set forth herein.

68. APPLE possesses one or more copyrights related to the Mac OS.

69. APPLE licenses the Mac OS and any copyrights corresponding to the Mac OS through APPLE’s EULA.

70. As a part of APPLE’s EULA, APPLE requires the end-user to “agree not to install, use, or run the Apple Software on any non-Apple-Labeled Computer.”

71. Apple-Labeled Computer Hardware Systems are not covered by any copyright corresponding to the Mac OS.

72. APPLE has leveraged and continues to leverage the limited monopoly granted by the Copyright Act through the copyrights corresponding to the Mac OS to areas outside the copyright monopoly or otherwise granted by the Copyright Act including the requirement that end-users only install the Mac OS on Apple-Labeled Computer Hardware Systems.

73. APPLE’s use of the EULA in conjunction with its copyrights in this manner is anticompetitive.

74. APPLE’s use of the EULA in conjunction with its copyrights in this manner violates the underlying public policy of the federal copyright laws.

75. APPLE’s use of the EULA in conjunction with its copyrights to expand its monopoly to areas outside the copyright grant in a manner that is anticompetitive and contrary to public policy constitutes a misuse of APPLE’s copyrights.

76. PSYSTAR has been directly harmed by APPLE’s use of the EULA in conjunction with APPLE’s misuse of its copyrights.